

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-2, 5-11, 14-21, 24-27 and 30-32 are pending in the application. No claim amendments are presented, thus, no new matter is added.

In the Office Action, Claims 1-2, 5-11, 14-21, 24-27 and 30-32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Hayes et al. (U.S. Pub. 2003/0200216, herein Hayes) in view of Yokota et al. (U.S. Pub. 2006/0095381, herein Yokota).

Applicant notes that Yokota qualifies as prior art only under 35 U.S.C. §102(e), as the present application priority date (and filing date) antedates the publication date of Yokota. To the extent the rejections above apply to the present claims, Applicant respectfully traverses the rejections.

As Yokota is §102(e) art, the obviousness rejection is deficient under 35 U.S.C. §103(c) as explained below. Applicants submit that the present application and the Yokota reference were, at the time the present invention was made, owned by, or subject to an obligation of assignment to Sony Corporation. Applicant notes that the Yokota reference lists Sony Corporation as a sole assignee, while the present application lists both Sony Corporation and Sony Disc Technology Incorporated as assignees. However, Sony Disc Technology Incorporated is (and was at the time of the invention) a wholly owned subsidiary of Sony Corporation. Therefore, in accordance with MPEP § 706.02(l)(2), the Yokota reference may be disqualified under 35 U.S.C. §103(c), as both the Yokota reference, and the present application, are (and were at the time of the invention) wholly owned by Sony Corporation.

Accordingly, application of the Yokota reference in this obviousness rejection is improper.¹

As all the rejections of record rely on Yokota, Applicant respectfully submits these rejections are traversed as Yokota may not be applied as a basis for supporting a *prima facie* case of obviousness as outlined by 35 U.S.C. §103(c).

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

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¹ Applicant notes that the filing date of the present application is after November 29, 1999, therefore bringing the present application under the current guidelines for 35 U.S.C. §103(c) for excluding 102(e) art.